



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 6, 1998

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR98-0631

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113794.

The City of McAllen (the "city") received a request for "any and all arrest information" on a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from required public disclosure information that is confidential by law, and encompasses information protected under common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To the extent that the requestor is asking for all records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the city compile that individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. See *Open Records Decision Nos. 616 (1993), 565 (1990)*. The city, therefore, must withhold all compilations of the referenced individual's criminal history pursuant to section 552.101. Because of the form of the request, the city must withhold the requested information in this instance.

As we resolve this matter under section 552.101, we do not address the applicability of section 552.108. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 113794

Enclosures: Submitted documents

cc: Ms. Pat Skinner
Southwestern Bell Telephone
1010 N. St. Mary's, # 1207
San Antonio, Texas 78215
(w/o enclosures)